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Public Law: Local Government - Administrative Law

Alvin B. Rubin

an extrinsic source for ascertaining the basic purpose and nature of the statute. Louisiana, as is the case in most states, does not have a legislative record of the committee hearings and floor debates, and so our courts must rely heavily on artificial canons of construction, such as the doctrines of *expressio unius est exclusio alterius, ejusdem generis,* and *noscitur a sociis.* These maxims are merely guides to interpretation, giving way to the overriding general legislative purpose if such purpose can be ascertained.[25] Sometimes the general legislative purpose is ascertainable from the title of the act or a policy section. More often, such guides to statutory interpretation are unavailable or are very inadequate. The Council Digests in Louisiana will not provide the sponsor's version of the law, often available from the congressional records as to federal statutes.[26] However, they should be entitled to considerable weight in ascertaining the nebulous "legislative intent," which is the composite purpose of the committees that reported the bill favorably and of the legislative body that gave it vitality by final passage. The Legislative Council Digests were considered by these groups and may reasonably be presumed to represent their understanding as to the general nature and scope of the enactment. The availability of this interpretative material, and its weight, may well depend upon whether an official depository of these digests is available, either in the Office of the Secretary of State or of the Legislative Council itself.

LOCAL GOVERNMENT — ADMINISTRATIVE LAW

*Alvin B. Rubin**

ZONING

An attack upon the validity of an application of the New Orleans zoning ordinance was made in *New Orleans v. La Nasa.*[1]

25. City of Shreveport v. Price, 142 La. 936, 77 So. 883 (1918), refusing to apply the doctrine of *expressio unius*; Boardman v. State, 203 Wis. 173, 233 N.W. 556 (1930), holding that these maxims of construction "are servants, rather than masters, of the court."

26. See Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384 (1951) where the Court looked to the statements of the bill's sponsor, Senator Tydings, as to the purpose of the Miller-Tydings amendment to the Sherman Act.

*Member, Baton Rouge Bar, Part-time Assistant Professor of Law, Louisiana State University.

1. 230 La. 289, 88 So.2d 224 (1956).

A property owner complained that the front portion of his property, on Gentilly Boulevard, was zoned residential while the rear portion, twenty feet in width, was zoned for industrial use. The property owner urged that such an application of the ordinance was unconstitutional and that it was invalid as unreasonable.

The court applied the settled principle that zoning "does not violate any constitutional guarantee unless it is found to be palpably unreasonable and arbitrary."[2] That left for consideration only the contention "that the zoning of the property was clearly arbitrary and unreasonable, having no substantial relation to the health, safety, morals or general welfare of the community."

In accordance with the rule which has universally been applied in other states,[3] the court held that the burden of proving the ordinance unreasonable rested upon the plaintiffs. This burden was not sustained by showing that the city had not adopted all of the recommendations of a survey made by a firm of municipal planning experts. The court felt that the evidence clearly showed that "prodigious study and comprehensive planning" went into preparation of the ordinance.

The court distinguished a case in which it has held an application of the Baton Rouge zoning ordinance invalid, *State* ex rel. *Loraine, Inc. v. Adjustment Board of the City of Baton Rouge*.[4] The grounds of distinction are important. The court stated that in the *Loraine* case, "the area zoned residential was unzoned before its acquisition and the landowner was led to believe that the property would be classified commercial, both by letter from the planning engineer of the City Planning Commission and by a zoning map prepared by the Commission." The court did not agree with the defendants' contention that the rear portion of the property was in fact zoned industrial but held that, even if it were, "defendants would have no cause for complaint." They "can hardly be heard to say that the zoning is unreasonable because the rear 20 feet of their lots is zoned for a less restrictive (and more profitable) use."

If the *Loraine* decision is to be applied so narrowly as the consideration of it in the *La Nasa* case indicates, zoning com-

2. 88 So.2d at 226.
3. See 1 ANTIAU, MUNICIPAL CORPORATION LAW 420 (1955).
4. 220 La. 708, 57 So.2d 409 (1952).

missions have more latitude in classifying property than indicated by some of the general statements made in the opinion in the *Loraine* case.

PUBLIC PROPERTY

The dedication of property to a public use, is, in effect, irrevocable.[5] Only the Legislature may alter or terminate the dedication. These principles formed the basis of the problem presented in *New Orleans v. Louisiana Society for Prevention of Cruelty to Animals*.[6] The city had agreed to sell property known as "Commerce Place" to the society. The society refused to accept title on the grounds that the city had not acquired title or, if it had, that the property was acquired for public use and therefore could not be disposed of for private use without an express legislative grant of authority. The city sought specific performance of the agreement.

The court concluded from the evidence that title to the public square became vested in the City of New Orleans "as public property by dedication in 1836." The city sought to find legislative authority to dispose of the property in a provision of the New Orleans City Charter,[7] which provided in part that "the Commission Council shall also have power . . . by a two-thirds vote to sell or change the designation of any street, side-walk or other property which is no longer necessary for the public use to which it was originally destined."

The court held that this "general authority" is "not such an express and specific authorization as required by our codal articles and jurisprudence to alienate property designated and treated as locus publicus." Justice McCaleb dissented on this point, feeling the decision to be in conflict with prior decisions.[8] Justice Hawthorne concurred in the decree on the basis of a

5. See Shreveport v. Walpole, 22 La. Ann. 526 (1870), and other Louisiana cases cited in opinion. See also Lowell v. Boston, 322 Mass. 709, 79 N.E.2d 713 (1948); 1 ANTIAU, MUNICIPAL CORPORATION LAW 527 (1955).

6. 229 La. 246, 85 So.2d 503 (1956).

7. La. Acts 1912, § 8(1), as amended, La. Acts 1948, No. 378. See also LA. CONST. art. XIV, § 22, as amended, La. Acts 1950, No. 551.

8. Citing State *ex rel.* Ruddock Orleans Cypress Co. v. Knop, 147 La. 1057, 86 So. 493 (1920) (involving exchange of street right of way for other property); Schernbeck v. New Orleans, 154 La. 676, 98 So. 84 (1923) (involving sale of property found by city council to be needed no longer for a street); State *ex rel.* Porterie v. Housing Authority of New Orleans, 190 La. 710, 182 So. 725 (1938) (involving closing streets in connection with creation of the Housing Authority of New Orleans).

further provision in the New Orleans City Charter which qualified the power quoted above by adding: "provided that no designation of any property as a public park or public square . . . shall be changed without the approval in writing of seventy per cent (70%) of the property owners within a radius of three hundred (300) feet of such property." A rehearing was applied for and amicus curiae briefs were filed by the Committee on Title Examination of the New Orleans Bar Association and by the Cities of Alexandria, Baton Rouge, and Monroe, urging that the original decision left the validity of many titles in doubt.

In its opinion on rehearing, the court found that the provisions of the city charter were sufficient to amount to "express authority" granted the city by the Legislature to change the designation of the property.[9] But the court concluded that "Commerce Place" was a public square and hence that consent of the neighboring owners was required by the applicable provisions of the New Orleans Charter before it could be sold. Justice McCaleb dissented on the ground that there was nothing in the record which defined Commerce Place as a public square and he did not believe it to be a square within the meaning of the city charter. Justice Hawthorne concurred in part and dissented in part, stated that he agreed with the principles set forth by the court but that he was "unable to conclude from the record that 'Place du Commerce' was and is in fact a public park or public square." He suggested that the cause should be remanded for further proceedings concerning that question.

ADJUDICATION OF TAX PROPERTY

In a companion case[10] to an earlier decision[11] the court affirmed its decision that a suit to compel a city to issue a deed for property adjudicated at public auction must allege that the adjudication took place under the procedure prescribed by R.S. 47:2191 which deals specifically with the sale of property adjudicated to the City of New Orleans. No cause of action was stated because the plaintiff failed to allege adjudication under that act and alleged instead that the auction was held pursuant to R.S. 33:2861, which deals with adjudications of property

9. 229 La. 246, 270, 85 So.2d 503, 511 (1956).
10. Warren Realty Co. v. Sibley, 229 La. 456, 86 So.2d 101 (1956).
11. State *ex rel.* Warren Realty Co. v. New Orleans, 226 La. 297, 76 So.2d 308 (1954.)

belonging to municipalities generally. The court had previously held the general provisions inapplicable to the City of New Orleans because of the special statute providing for procedure there.

SEWERAGE MAINTENANCE TAX

In *Grein v. First Sewerage District of the City of Lake Charles*,[12] the court held that the five mill tax limit on special purpose taxes contained in Article X, Section 10, of the Louisiana Constitution of 1921 superseded earlier statutory authority limiting to one mill the maintenance tax which could be imposed by a sewerage district. The court relied upon the statement in the Constitution that "this section shall be self-operative." The decision's broader application is indicated by the court's statement that "the provisions of R.S. 33:3937 cannot limit the amount of taxes which Article X, Section 10, authorizes the governing authority to impose." In addition, the court here applied the previously settled rule that taxes imposed by virtue of authority contained in other sections of the Constitution are not to be included in computing the overriding twenty-five mill maximum set by Section 10 of Article X for taxes authorized by that section notwithstanding that, under other constitutional provisions, taxes may be levied for exactly the same purposes as those for which they are permitted by Section 10 of Article X.

ADMINISTRATIVE LAW

The court was relatively untroubled by questions of administrative law and procedure at this term. The one point raised involved the legality of action taken by the Liquefied Petroleum Commission in organizing itself and conducting Commission business at a time when two of the five members of the Commission provided by the Constitution had not yet been appointed.[13] However, the Constitution does provide that a majority of the Commission shall constitute a quorum for the transaction of all business; hence three members could lawfully act as a Commission. The court interpreted this provision as containing adequate authority for the three existing members to meet and organize as a preliminary to transacting the business

12. 230 La. 187, 88 So.2d 21 (1956).
13. Liquefied Petroleum Gas Commission v. E. R. Kiper Gas Corp., 229 La. 640, 86 So.2d 518 (1956).

of the Commission. The wisdom of the decision is demonstrated when one reflects upon the delaying tactics possible if a full board was deemed necessary for organization and where, as here, two members were to be nominated by the industry and appointed by the Governor: the possibility of delay is present even though, failing industry nomination, the Governor has the power to appoint since there must presumably be at least an attempt to obtain nominations before such appointments.

STATE AND LOCAL TAXATION

*Charles A. Reynard**

Four of the cases decided during the past term were concerned with varying aspects of state and local taxation.

The most significant of these cases by far was *Fontenot v. John I. Hay Company*,[1] a summary proceeding by the State Collector of Revenue to collect income taxes on that portion of the taxpayer's net income attributable to business performed in Louisiana. The taxpayer, a Delaware corporation, licensed to do business in Delaware and Illinois, but not in Louisiana, operated as a common carrier by water, transporting cargoes over the Mississippi, Ohio, and Tennessee Rivers, as well as the Intracoastal Waterway through Louisiana and Texas. Although it maintained an office and employed persons in Louisiana, the taxpayer did no intrastate business in the state. Its activities here consisted of transporting cargoes through the state, delivering cargoes here that originated outside the state or picking up cargoes in Louisiana for out of state delivery. The Collector sought payment of income taxes on that portion of the corporation's net income apportioned to Louisiana in accordance with the formula prescribed by the act. The taxpayer conceded that the apportionment was correct, but contended that Louisiana had no constitutional authority to impose its tax because of the limitations of the commerce clause in the Federal Constitution.

The litigation came as no surprise, since a number of foreign corporations in comparable situations had been asserting immunity to state taxation of apportioned net income since the 1951 decision of the United States Supreme Court in *Spector Motor*

* Professor of Law, Louisiana State University.

1. 228 La. 1031, 84 So.2d 810 (1955).